

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN DEROSE, Personal Representative of the
Estate of MICHAEL LUNDSTROM, Deceased,

Plaintiff-Appellant,

v

ERWIN B. DOERNER,

Defendant,

and

ADA B. DOERNER,

Defendant-Appellee.

UNPUBLISHED

August 4, 2005

No. 261384

Ionia Circuit Court

LC No. 03-022751-NO

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant summary disposition in this wrongful death action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Erwin Doerner (Doerner) shot and killed plaintiff's decedent, who was his neighbor. Plaintiff brought this action against Doerner and his wife Ada Doerner (defendant), alleging that defendant knew Doerner had mental problems, emotional problems, and an "alcohol abuse problem" and had threatened to kill the decedent and that defendant breached a duty to protect the decedent. The trial court determined that defendant did not owe a duty to the decedent and granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8).

"If a court determines as a matter of law that a defendant owed no duty to a plaintiff, summary disposition is appropriate under MCR 2.116(C)(8)." *Terry v Detroit*, 226 Mich App 418, 424; 573 NW2d 348 (1997). We review de novo a trial court's decision on a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Whether defendant owed a duty to plaintiff is a question of law that we also review de novo. *Fulz v Union-Commerce Associates*, 470 Mich 460, 463; 683 NW2d 587 (2004).

“[A] negligence action may be maintained only if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm.” *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). In general, there is no legal duty obligating one person to aid or protect another, and in particular, “an individual has no duty to protect another from the criminal acts of a third party in the absence of a special relationship between the defendant and the plaintiff or the defendant and the third party.” *Id.* at 493 (citations omitted).

We agree with the trial court that defendant did not owe a duty to protect the decedent from the criminal actions of her spouse. In *Bell & Hudson, PC v Buhl Realty Co*, 185 Mich App 714, 718-719; 462 NW2d 851 (1990), the Court rejected the plaintiffs’ contention that a sibling relationship was sufficient to impose a duty on the defendant to protect the public from his brother, despite the defendant’s knowledge of facts indicating an imminent attack. In *Petersen v Heflin*, 163 Mich App 402, 407-408; 413 NW2d 810 (1987), this Court held that a marital relationship did not “automatically” impose upon one spouse a legal obligation to protect third persons from the acts of the other spouse. The decision implies that “special facts and circumstances underlying some marital relationships” may give rise to such a duty where a person has special knowledge or training regarding the mental state of one’s spouse, a special ability to control the conduct of one’s spouse, or where one contributed to a situation that culminated in the harm to the third party. *Id.* at 407-408. None of those circumstances are alleged here.

Plaintiff argues that she is relying on the “special circumstances” exception, rather than the “special relationship” exception to the general rule. According to plaintiff, *Roberts v Pinkins*, 171 Mich App 648, 652-653; 430 NW2d 808 (1988), sets forth the proper analysis for determining whether “special circumstances” exist. Contrary to plaintiff’s assertion, however, *Roberts* does not set forth a distinct analysis for “special circumstances” as opposed to a “special relationship.” The Court indicated that the same factors should be considered in both situations. *Id.* at 652-653. Moreover, plaintiff does not provide any authority to support her contention that “special circumstances” are adequately alleged here. Essentially, she declares that she is relying on the “special circumstances” exception, but then fails to develop an analysis concerning when the exception applies.¹ This Court’s decision in *Bell & Hudson, supra* at 718, suggests that the “special circumstances” exception applies when a person voluntarily attempts to give aid to another, which did not occur here. In our view, *Bell & Hudson* and *Petersen, supra*, both indicate that the alleged marital relationship between defendant and Doerner is insufficient to impose a duty on defendant to protect third parties from Doerner. We decline plaintiff’s

¹ It is insufficient for plaintiff “‘simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

invitation to hold that she has alleged “special circumstances” that distinguish this case from those decisions.

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray